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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,161	12/08/2003	Marco Serra	MDE-002C1	2317
42532	7590	01/11/2006	EXAMINER	
PROSKAUER ROSE LLP ONE INTERNATIONAL PLACE 14TH FL BOSTON, MA 02110			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,161

Applicant(s)

SERRA ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-57 is/are pending in the application.
- 4a) Of the above claim(s) 43-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1114.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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1. The art rejections over Kabra et al (6,030,442) taken individually or collectively are withdrawn in view of the present amendment. Kabra does not teach a microporous gel comprising a water permeable layer and gel particles disposed in the water permeable layer.
2. The art rejections over Asher et al (US 5,854,078) taken individually or collectively are withdrawn in view of the present amendment. Asher does not teach a sensor device comprising a water permeable layer and gel particles disposed in the water permeable layer.
3. The art rejections over Bashan (US 3,900,030) are maintained.
4. The art rejections over EP 0 301 753 are maintained.
5. The information disclosure statement (IDS) submitted on 11/14/2005 is entered and considered.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 24-34, and 37-42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bashan (US 3,900,030) substantially as set forth in the 01/12/2005 Office Action.
9. Claims 24-34, and 37-42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 0 301 753 (EP'753).
10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bashan (US 3,900,030) or EP 0 301 753 as applied to claim 24 above, in view of Itoh et al (US 4,828,710) substantially as set forth in the 07/12/2005 Office Action.
11. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bashan (US 3,900,030) as applied to claim 24 above, and further in view of Zadini et al (US 5,609,586) substantially as set forth in the 07/12/2005 Office Action.
12. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 301 753 as applied to claim 24 above, and further in view of Peterson (US 5,538,500) substantially as set forth in the 07/12/2005 Office Action.

Response to Arguments

13. The art rejections over Bashan taken alone or in combination with other references have been maintained for the following reasons. Applicants argue that nowhere does Bashan disclose or teach what is claimed. The examiner disagrees. Bashan discloses a tampon comprising an open cell foam matrix containing hydrogel particles (abstract). The tampon is made from hydrophilic open celled polyurethane foam. Likewise, it is water permeable. Bashan does not specifically disclose the gel particles that expand when a temperature of a fluid in contact with the gel particles is

below a phase transition temperature of the gel particles and that contract when the temperature of the fluid in contact with the gel particles is above the phase transition temperature of the gel particles. However, it appears that Bashan uses the open cell foam containing hydrogel particles as Applicants, therefore, it is not seen that the tampon would have performed differently than the material of the present invention in term of expanding and contracting in response to the temperature of the fluid to which the gel particles are exposed. The same token is applied to the absorption and the expelling of the gel particles when the gel particles are in contact with the fluid at the temperature below or above the volume phase transition critical temperature of the gel particles respectively. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Like material has like property. Applicants further argue that Bashan does not teach the gel particles having a temperature sensitive property. The examiner disagrees. Since Bashan is using the hydrogel as a gel particle like Applicants, it is not seen that the hydrogel could not have been temperature sensitive. This is also in line with *In re Spada*. Like material has like property. Accordingly, the art rejections over Bashan are sustained.

14. The art rejections over EP '753 taken alone or in combination with other references have been maintained for the following reasons. Applicants argue that nowhere does EP '753 disclose or teach what is claimed. The examiner disagrees. EP'753 discloses a wound dressing comprising an open cell foam matrix containing hydrogel particles (abstract). The wound dressing contains water-absorbing materials,

therefore it is water-permeable. EP'753 does not specifically disclose the gel particles that expand when a temperature of a fluid in contact with the gel particles is below a phase transition temperature of the gel particles and that contract when the temperature of the fluid in contact with the gel particles is above the phase transition temperature of the gel particles. However, it appears that EP'753 uses the open cell foam containing hydrogel particles as Applicants, therefore, it is not seen that the tampon would have performed differently than the material of the present invention in term of expanding and contracting in response to the temperature of the fluid to which the gel particles are exposed. The same token is applied to the absorption and the expelling of the gel particles when the gel particles are in contact with the fluid at the temperature below or above the volume phase transition critical temperature of the gel particles respectively. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Like material has like property. Applicants further argue that EP'753 does not teach the gel particles having a temperature sensitive property. The examiner disagrees. Since EP'753 is using the hydrogel as a gel particle like Applicants, it is not seen that the hydrogel could not have been temperature sensitive. This is also in line with *In re Spada*. Like material has like property. Accordingly, the art rejections over EP'753 are sustained.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

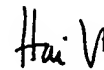
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Friday, from 6:00 to 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HV



**HAI VO
PRIMARY EXAMINER**